D.B. CIVIL SPECIAL APPEAL(W)NO.708/2007

Gullu Khan
Vs.
State of Rajasthan & Ors.

DATE OF ORDER :: 28-05-2007

HON'BLE THE CHIEF JUSTICE SHRI S.N.JHA
HON'BLE SHRI JUSTICE MOHAMMAD RAFIQ

Shri N.K. Singhal, for the appellant.

This special appeal is directed against the order of the learned Single Judge dismissing the writ petition of the appellant. The appellant had filed the writ petition challenging the departmental enquiry initiated against him on the ground that on 31.12.2006 he handed over charge of the post of Sub Inspector at 1.45 P.M. on superannuation from service and charge-sheet could not be issued thereafter in view of the provisions of rule 7 of the Rajasthan Service(Pension)Rules, 1996.

Sub-rule (2) of rule 7 of the Rajasthan Service(Pension)Rules provides that departmental proceedings referred to in sub-rule(1), if instituted while the Government servant was in service whether before his retirement or during his re-employment, shall, after the final retirement of the Government servant, be deemed to be proceedings under this rule

and shall be continued and concluded by the authority in the same manner as if the Government servant had continued in service.

The submission of the counsel is that proceeding instituted while in service can be continued by the authority but as the appellant stood retired from service in the afternoon of 31.12.2006 no such proceeding can be instituted or continued. The word of significance is “instituted”, and therefore where the charge-sheet is served after the date of superannuation, a question may arise as to when the proceeding was instituted so as to be continued after retirement. However, in the present case it is not necessary to go into this issue, for, the charge-sheet was admittedly issued on 31.12.2006 which means that the proceeding already stood 'instituted'. The only point for consideration is whether handing over of the charge of the post put an end to the relationship of master and servant for initiating departmental enquiry against the appellant. We are of the view that handing over of the charge is merely an administrative arrangement and it does not put an end to the relationship of master and servant. 31.12.2006 being the date of superannuation, it is plain, the appellant remained

in service till mid-night, and therefore the issuance/service of charge-sheet after the alleged handing over of charge at 1.45 P.M. is in accordance with law. The handing over of the charge was not at all relevant for initiating the departmental proceeding.

Counsel then submitted that the charge related to the period 2001 and being stale, enquiry could not be initiated. In this regard, reliance was placed on P.V. Mahadevan Vs. MD, T.N. Housing Board, (2005) 6 SCC 636.

We looked into the charge-sheet issued to the appellant under rule 16 of the Rajasthan Civil Services(Classification, Control and Appeal)Rules, 1958 from perusal of which it appears that the appellant, among other things, is alleged to have registered a case of murder under Section 174 of the Code of Criminal Procedure. Section 174 of the Code refers to the case of suicide. The charge-sheet states that the body of the deceased bore marks of physical violence. The postmortem report also suggested that the cause of death was blow by some hard sharp edged weapon. Despite all this the appellant did not register the case, in stead, he

made a false entry to the effect that wife of the deceased had made statement that she did not suspect any foul play in the death of her husband. Having regard to the nature of the charges which is quite serious, we do not think the charge-sheet should be quashed on the ground of being stale. We thus do not find any merit in the contention of the counsel.

In the facts and circumstances the learned Single Judge did not commit any error in dismissing the writ petition. The appeal is dismissed.

[MOHAMMAD RAFIQ],J. **[S.N.JHA],CJ.**

Praveen